

REMARKS

It is respectfully requested that the above amendments be entered pursuant to the provisions of 37 C.F.R. §1.116(b); that this application be reconsidered in view of these amendments; and that all of the claims remaining in this application be allowed.

Amendments

Claims 21 and 22 are the only claims remaining in this application. Amendments have been requested to Claims 21 and 22 in order to better delineate the claimed invention. Applicant reserves the right to file a continuation application to the previously presented claimed subject matter.

Specifically, Applicant has requested that Claim 21 be amended to recite that the T-cells subjected to oxidative stress are separated from mammalian blood. Support for this amendment is found in Applicant's specification at page 4 in the first full paragraph after the Detailed Description of the Invention.

Applicants have requested that Claim 22 be amended to provide proper antecedent basis for the term "T-cell component" and to further delineate that the peripheral blood mononuclear cells comprising a T-cell component are separated from peripheral blood prior to treatment with oxidative stress. Again, support for this amendment is found in Applicant's specification at page 4 in the first full paragraph after the Detailed Description of the Invention.

No new matter has been added by these claims.

The above amendments are requested to be entered under the provisions of 37 C.F.R. §1.116(b). Specifically, Applicant submits that these amendments simply issues for appeal by clarifying the claimed invention and, accordingly, their entry under §116(b) is appropriate.

Rejections Under 35 U.S.C. §102

Claims 21 and 22 stand rejected as anticipated under 35 U.S.C. §102(e) over U.S. Patent No. 5,980,954 (the '954 patent'). Claims 21 and 22 stand rejected as anticipated under 35 U.S.C. §102(b) over WO 98/07436 (the '436 application'). For the following reasons, both of these rejections are traversed.

Initially, Applicant maintains that the arguments heretofore presented in his response filed on November 17, 2003 adequately addresses these rejections and these arguments are incorporated herein. Nevertheless, Applicant provides the following further information regarding this rejection.

First, a rejection based on anticipation requires that each of the material elements recited in the claimed invention be disclosed in the cited prior art reference. *In re Marshall*, 577 F2d 301, 198 USPQ 344 (CCPA 1979).

Second, with regard to the above, central to the claimed invention is the recitation of separation of the blood component from mammalian blood prior to oxidatively stressing the blood component. For example, in now presented Claim 21, T-cells are separated from the blood prior to subjecting these T-cells to oxidative stress. Likewise, in now presented Claim 22, peripheral blood mononuclear cells comprising a T-cell component are separated from human peripheral blood by leukopheresis prior to oxidative stress.

Contrarily, in neither of the cited prior art references is there any disclosure of isolating these components prior to treatment with oxidative stress. At best, the '954 patent and the '436 application recite that the blood aliquot or separated cellular fractions of the blood... can be used.¹ However, nowhere in either of these references is there a disclosure of isolating either T-cells or peripheral blood mononuclear cells comprising a T-cell component from mammalian blood and then stressing only this fraction of the so separated components.

¹ See, for example, at Col. 8, lines 56 et seq., of the '954 patent and the paragraph bridging pages 16 and 17 of the '436 application.

In view of the above, both the '954 patent and the '436 application fail to disclose all of the material elements of the now claimed invention. Accordingly, rejection of now presented Claims 21 and 22 under 35 U.S.C. §102 over the cited references is in error. Withdrawal of these rejections is earnestly solicited.


Applicant submits that this application is now in condition for allowance. A notice to that effect is earnestly solicited.

Notwithstanding the above and in order to avoid unintended abandonment of this application, a Notice of Appeal is enclosed.

The Commissioner is authorized to charge the cost of any petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-0872 referencing docket no. 355908-1951. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 10, 2004

Respectfully submitted,

By 
Gerald F. Swiss
Registration No.: 30,113
Foley & Lardner LLP
Three Palo Alto Square
3000 El Camino Real, Suite 100
Palo Alto, CA 94306
(650) 856-3700
Attorney for Applicant